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September 9, 2020

VIA CERTIFIED AND ELECTRONIC MAIL

National FOIA Office
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (2310A)
Washington, DC 20460
(202) 566-1667
hq.foia@epa.gov

Re: Freedom of Information Act Request

To Whom It May Concern,

This is a request under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, as amended, for records within the control of your agency related to EPA's review of the states of Oregon and Washington (collectively "the states") and the Confederated Tribes and Bands of the Yakama Nation's ("Yakama Nation") request for National Priority List listing for the Bradford Island site and surrounding waters in the Columbia River.¹ I am making this request on behalf of Columbia Riverkeeper ("Riverkeeper"). Pursuant to FOIA, please send me copies of any records pertaining to this request.

Riverkeeper is a 501(c)(3) non-profit organization committed to protecting and restoring the Columbia River and all life connected to it, from the headwaters to the Pacific. To achieve these objectives, Riverkeeper operates scientific, educational, and advocacy programs aimed at protecting water quality, habitat, and salmon in the Columbia Basin. Riverkeeper submits the following FOIA request to inform the public and to advance its mission of protecting and restoring the Columbia River, which is threatened by toxic contamination on and around Bradford Island.

This request concerns all records within the United States Environmental Protection Agency's ("EPA") custody or control generated, modified, sent and/or received since October 10, 2019, to the date this FOIA request is acted upon, related to National Priority List ("NPL") listing request by the states and Yakama Nation for Bradford Island and surrounding waters in the Columbia River. Specifically, this request includes, but is not limited to, the following:

¹ See Exhibit 1 (Letter from Oregon, Washington, and Yakama Nation to EPA (Oct. 10, 2019)).

- Communications between EPA and the U.S. Army Corps of Engineers ("Corps"); and
- Internal EPA memoranda, notes, and communications.

In referring to the "NPL listing request," Riverkeeper means all processes related to EPA's decision to propose, or not propose, Bradford Island and surrounding waters as an NPL site. This includes all communications: (1) between EPA Region 10 and EPA Headquarters, (2) within EPA Region 10, and (3) within EPA Headquarters.

Scope

If EPA believes that the responsive records are readily available online, please list the record title in your response so that Riverkeeper can confirm that it does in fact have, or have access to, the document. In the event that EPA denies access to any of the records, please note that FOIA provides that, if only portions of a file are exempted from release, the remainder of the file must still be released. Riverkeeper therefore requests that EPA provide it with all non-exempt portions of its request that are reasonably segregated from exempt portions. Riverkeeper further requests that EPA describe any deleted material in detail and specify the basis and justification for the denial.

Timing

Under FOIA, the agency must make a determination on this request within 20 working days. 5 U.S.C. § 552(a)(6)(A)(i). A determination requires the agency to gather and review the documents, determine and communicate the scope of documents it intends to produce and withhold, and the reasons for withholding any documents, and inform Riverkeeper of its appeal rights.

Format

Riverkeeper requests that EPA provide copies of the requested records in the format of a CD, DVD, or flash drive, rather than or in addition to the FOIAonline, pursuant to 5 U.S.C. § 552(a)(3)(B). Where appropriate and possible, please provide electronic documents in text searchable .pdf, .txt, .doc, .docx, .rtf, .xls, or .xlsx form.

Fees

Riverkeeper requests that EPA waive any applicable fees related to this request, including document search and duplication costs. Riverkeeper is a non-profit organization and does not have a commercial interest in the requested information. 5 U.S.C. § 552(a)(4)(A)(iii). The organization's interest in requesting these documents is to further its mission to protect and restore the water quality of the Columbia River and all life connected to it, and to educate their members, other stakeholder organizations, and the general public on the federal government's management of dams, and associated pollution, along the Columbia River.

For over 40 years, the Corps and its contractors dumped toxic pollution in and along the Columbia's shorelines at Bradford Island, located near Bonneville Dam in Multnomah County, Oregon. The area is a historical tribal fishing area. Fish caught near the island contain the highest levels of polychlorinated biphenyl (PCBs) in the Pacific Northwest. Today, tribal people and diverse communities use the area for subsistence and recreational fishing despite advisories warning not to eat resident fish. The Corps has not engaged in new cleanup since 2007 when the federal agency removed PCB-laden sediments from the river. Subsequent reports and sampling concluded that PCB concentrations in fish remain extremely high in the area. The area is also contaminated with lead, mercury, and petroleum chemicals.

In 2019, the Yakama Nation and states of Oregon and Washington formally requested that EPA add Bradford Island and surrounding waters on the NPL. Prior to and since that time, Riverkeeper conducted public and media outreach to inform the general public about the pollution at and around Bradford Island and how the federal government could protect public health and the environment by pursuing an NPL listing.

The requested information is likely to contribute significantly to public understanding of the operations or activities of the government for several reasons. *See* 40 C.F.R. § 2.107(l)(1). First, the subject of the request concerns the "operations or activities of the government." *Id.* § 2.107(l)(2)(i). Specifically, the request concerns EPA's review process of a heavily contaminated area on and along the Columbia River.

Second, the records have significant informative value and are "likely to contribute" to an understanding of government operations or activities. *Id.* § 2.107(l)(2)(ii). The records will help the public understand the NPL process and disclosure will allow the public and watchdog organizations to ensure federal compliance with environmental protection statutes. To the best of Riverkeeper's understanding, this information is not in the public domain, and the public currently does not have an understanding of EPA's review of the Tribe and states' request for NPL listing.

Third, the disclosure will contribute to an understanding of the subject by the public. *Id.* § 2.107(l)(2)(iii). Riverkeeper has expertise and experience in disseminating this type of information obtained through FOIA and other public records requests. Riverkeeper's request is of interest to its 16,000 members and other members of the public that use and depend on the Columbia River for food, recreation, and more. Presenting such information to the public is a central focus of Riverkeeper's organization. Riverkeeper presents information to the public through its website, newsletters, e-newsletters, public action alerts, public reports, media, and public presentations. For example, Riverkeeper regularly presents information on Columbia River issues—including toxic pollution sites, salmon habitat conservation and the impacts of dams on the Columbia River and species that depend on it—at elementary and high schools, community colleges, public meetings, at Riverkeeper public events, and in front of government bodies. Specifically, Riverkeeper has disseminated information gained through past FOIA requests to the Corps regarding Bradford Island to its members and the general public through Riverkeeper's website, e-newsletter, fact sheets, and public outreach materials.

Fourth, disclosure is likely to contribute "significantly" to public understanding of government operations or activities. *Id.* § 2.107(I)(2)(iv). Specifically, the public currently does not have an understanding of where EPA is in its NPL review process and how EPA is evaluating the Tribe and states' request for NPL listing. This request will help the public understand many important aspects of the process. For example, Columbia Riverkeeper will use the information obtained through this request to inform the public how far along EPA is in the process, how much EPA is coordinating with state and federal agencies throughout the NPL process, and what sort of considerations EPA is evaluating as it works through the process. All of this information is currently unavailable to the public, and this request will therefore enhance the public's understanding of this issue to a significant extent.

The requested information is not primarily in the commercial interest of the requester. *Id.* § 2.107(I)(1). As a 501(c)(3) nonprofit organization, Riverkeeper has no commercial interest in this matter. *Id.* § 2.107(I)(3)(i). Rather, Riverkeeper's primary interest in this information is to further the public's interest in protecting and restoring the Columbia River and the public's understanding of the issues surrounding federally-operated dams and the legacy of toxic pollution. As provided above, Riverkeeper will disseminate this information in a variety of ways, all of which are free to the public and provide no commercial gains to Riverkeeper.

In the event that EPA does not grant Riverkeeper's requested fee waiver, please contact me **BEFORE** incurring any costs in response to this FOIA request. If there are any questions regarding this request, please do not hesitate to contact me at the email address or phone number listed below.

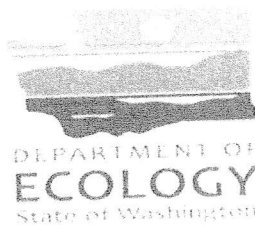
If you have any questions regarding this request, please do not hesitate to contact me at the email address or phone number listed below. Thank you for your time and consideration.

Sincerely,



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EXHIBIT 1



October 10, 2019

Chris Hladick
Regional Administrator
U.S. Environmental Protection Agency
1200 6th Avenue, Mailcode 21-B03
Seattle, WA 98101

**RE: National Priorities List Nomination and Requested Rulemaking –
Bradford Island Facility**

Dear Administrator Hladick,

The Confederated Tribes and Bands of the Yakama Nation ("Yakama"), the Oregon Department of Environmental Quality ("ODEQ"), and the Washington Department of Ecology ("WDOE") hereby jointly request that the U.S. Environmental Protection Agency ("EPA") place the Bradford Island facility, Multnomah County, Oregon, on the National Priorities List ("NPL") pursuant to Section 105(a)(8)(B) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9605(a)(8)(B), and the relevant provisions of the National Contingency Plan ("NCP"), 40 CFR Part 300. The requesting agencies are natural resource trustees for the Bradford Island facility and are currently participating in oversight of lead agency response actions by the U.S. Army Corps of Engineers, Portland District ("Corps").

The NCP at § 300.425(c)(1) authorizes EPA to include a site on the NPL if it scores sufficiently high on the Hazard Ranking System ("HRS"), which EPA promulgated as Appendix A of the NCP. The HRS evaluates the relative potential of uncontrolled hazardous substances, pollutants or contaminants to pose a threat to human health or the environment via four pathways: ground water, surface water, soil exposure and subsurface intrusion, and air. As a matter of EPA policy, those sites that score 28.50 or greater on the HRS are eligible for listing. In 2008, using information available at the time, EPA scored the Bradford Island site below 28.50 and issued a determination of No Further Remedial Action Planned (NFRAP). However, since that time significant new information on site conditions has emerged. Taking this information into account, it is our understanding that the Bradford Island site HRS score would exceed 28.50.

Facility History

The Bradford Island facility ("facility") is located on the Columbia River at River Mile (RM) 146.1, approximately 40 miles east of Portland, Oregon. Construction of the adjacent Bonneville Dam started in the 1930s. From approximately 1942 until 1982, the Corps and its contractors disposed of hazardous waste in a landfill at the facility. On one or more occasions during that time, the Corps and its contractors also disposed of electrical equipment debris and light bulbs into the Columbia River and onto a steep river bank that ultimately eroded into the River. Until 1988, the Corps also conducted sandblasting and equipment painting operations, and until the 1970s used a pistol range for small arms target practice. Sand blast grit was disposed of on the land surface and remains uncontained in areas. Other historical operations include electrical transformer disassembly and aboveground storage of hazardous waste.

Site Contaminants

The Corps' past practices have resulted in releases of hazardous substances into the soil, groundwater, and surface water in the Columbia River. Contaminants of Concern ("COCs") include petroleum hydrocarbons, polycyclic aromatic hydrocarbons ("PAHs"), metals (e.g., lead and mercury), polychlorinated biphenyls ("PCBs"), pesticides/herbicides, and volatile organic compounds ("VOCs").

Impacts on Surrounding Environment

Significant impacts to sediment and the fractured bedrock river-bottom in the vicinity of the Bradford Island facility have occurred. The full nature and extent of in-river contamination is undefined. Resident fish such as smallmouth bass caught near Bradford Island contain extremely high concentrations of PCBs as well as other COCs. Despite multiple removal actions, sediment, clam and fish tissue sampling in 2011 indicate that COC concentrations have not declined and have actually increased in fish. Impacted surface soils in certain parts of the facility such as the Sandblast and Bulb Slope Areas remain uncontained (e.g., sandblast grit triggering RCRA hazardous waste criteria). Stormwater discharge from contaminated areas of Bradford Island have not been regulated or monitored pursuant to a permit issued under the National Permit Discharge Elimination System (NPDES). Recent (2018–2019) stormwater and catchbasin sampling results from the Sandblast Area indicate that stormwater continues to be an ongoing source of contamination to the river. Porewater and near-bottom surface water sampling was conducted in 2018 in order to identify source areas, but results were inconclusive. Additional stormwater and near-bottom surface water sampling is planned for 2019–2020.

Response Activities

Pursuant to Executive Order 12580, the Corps has been the lead agency for the Bradford Island facility since 1997, when the Portland District began conducting investigations at the facility in coordination with ODEQ under ODEQ's Voluntary Cleanup Program. The facility is currently divided into two operable units ("OUs") for upland and river remedial actions under CERCLA Project NWP-13-0002. Response actions taken by the Corps include: removal actions in the

Columbia River in 2000, 2002, and 2007; Remedial Investigation reports for both OUs in 2012; and a Feasibility Study for the Upland OU in 2017. Through a Technical Advisory Group ("TAG"), Yakama, ODEQ, and WDOE have been and are currently participating in the Corps' actions leading to an expected draft Feasibility Study ("FS") for the River OU. The U.S. Fish and Wildlife Service has also been a participant in this process. There is disagreement between the Corps and several of the TAG agencies regarding the Corps' NFRAP determinations made in the 2017 Upland OU FS for the Sandblast and Bulb Slope Areas; the Corps has decided to address these concerns through Bonneville Dam's operation and maintenance as "Source Control Actions." Planning documentation for these Source Control Actions has not been finalized.

The President's Budget for Fiscal Year 2020 did not request that Congress appropriate any funds for the Portland District's lead agency activities at the Bradford Island facility. It is not yet clear if the 2021 budget prioritizes funding for this important project. While we rely on Congress to appropriate funding, lack of support from the administration puts at risk the prospect that the RI/FS process, that is required in the NCP, will reach a final Record of Decision any time in the near future.

In addition, TAG and other meetings with Portland District management have revealed a number of ongoing, serious concerns with the Corps' approach as the lead agency. Among these are: failure to sufficiently determine the nature and extent of site contamination; inadequate risk assessments that do not consider long term tribal residential uses or high fish consumption rates; failure to use or recognize state regulatory cleanup standards as applicable, relevant, and appropriate requirements ("ARARs"); inadequate communication with the participating TAG members; and failure to incorporate some TAG technical comments into the RI/FS documents. These problems have been repeatedly brought to the attention of the Corps' Portland District staff, managers, and attorneys, including through regularly scheduled high-level manager meetings, without adequate resolution.

Need for NPL Listing

The NPL, promulgated as Appendix B of the NCP, is currently amended annually through a formal agency rulemaking as required by 40 CFR § 300.425(c)(5). Data collected in 2011 indicate that PCB levels in fish tissue, including sculpin and smallmouth bass, remain significantly elevated, and in some samples exceeded levels observed prior to the 2007 removal action and the previous HRS ranking.

In 2013, both the Oregon Health Authority and the Washington Department of Health issued fish consumption advisories for resident fish species in the Columbia River above Bonneville Dam due to elevated levels of mercury and PCBs. Fetuses in utero, nursing babies and small children are most vulnerable to the health effects of these COCs. Fetuses and babies exposed to high levels of mercury and PCBs can suffer life-long learning and behavior problems. Fishers have been warned not to give resident fish caught from the middle Columbia River to others unless the recipients are aware of where the fish were caught and understand the recommendations in the state fish advisories. The cultural impacts of contaminated resident species on Indian treaty fishing in the Columbia River are enormous because enrolled tribal members traditionally do not waste by-catch caught in gill nets. By tribal regulation, enrolled Yakama members are currently

prohibited from building traditional fishing platforms in the area of the Bradford Island facility, which is a usual and accustomed treaty fishing area.


Given the current sampling data, continuing fish advisories, and the potential exposure to sensitive populations, it is clear that the COCs at the Bradford Island facility continue to pose a serious threat to human health and the environment requiring thorough investigation and expedited remediation. A new HRS ranking and listing on the NPL is therefore not only warranted but necessary given the continued concerns about the performance of the lead agency, as well as the potential elimination of funding for the existing CERCLA cleanup project.

We therefore request that EPA initiate a rulemaking for a proposed rule adding Bradford Island facility to the National Priorities List.

Sincerely,



Phil Rigdon
Superintendent, Department of Natural Resources
Yakama Nation



Richard Whitman
Director
Oregon Department of Environmental Quality



Maia Bellon
Director
Washington Department of Ecology

cc: Rose Longoria, Yakama Nation
Tom Zeilman, Yakama Nation
Rebecca Lawson, WA DOE
John Level, WA AGO
Paul Seidel, ODEQ
Gary Vrooman, ODOJ
Ken Marcy, U.S. EPA
Col. Aaron L. Dorf, U.S. ACE
Jeffrey Matson, U.S. ACE

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OF THE RETURN ADDRESS. FOLD AT DOTTED LINE.

CERTIFIED MAIL



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U.S. Environmental Protection Agency
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